

---

**REPORT 8**  
*(1215/52/IM)*

## **REQUEST FOR FUNDING – APPEAL ON MARINE EDCUATION CENTRE DECISION**

---

### **1. Purpose of Report**

This report advises on a recent deputation requesting that Council provide the Group Against Development at Te Raekaihau Point (aka Te Raekaihau Point Guardians) \$80,000 to help fund an appeal to the Environment court against the recent decision on the Marine Education Centre (MEC).

### **2. Executive Summary**

Wellington City Council has made a decision, in its non-regulatory capacity under the Local Government Act, to support the Wellington Marine Conservation Trust and the proposed Marine Education Centre on Te Raekaihau because of its fit with the Council's strategic direction.

Independent commissioners have made a decision on behalf of the Council to approve the resource consent application for the Marine Education Centre. The Environment Court has confirmed that three appeals against this decision have been received.

The Group Against Development at Te Raekaihau Point are not one of the three appellants however have requested that Council provide \$80,000 to help fund an appeal to the Environment court against the recent decision on the Marine Education Centre.

The Group Against Development at Te Raekaihau Point (and other opponents) have regularly stated a belief that the opponents to the project should be given similar funding from Council as the MEC proponents.

As the Council has publicly and financially supported the project it would not make sense to provide financial support to assist opponents of the project in the appeal.

There are avenues available to community groups who wish to apply for funding to appeal resource consent decisions, and officers note that the opponents are able to explore these avenues if they wish to appeal the decision and are short of finances.

Council's position has been clearly communicated to Dr Robinson and the Group Against Development at Te Raekaihau Point on several occasions.

### **3. Recommendations**

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that the Council supports the proposed Marine Education Centre, due to its good strategic fit with Council outcomes.*
3. *Decline the application from the Group Against Development at Te Raekaihau Point for \$80,000 towards appeal costs.*
4. *Note that the Group Against Development at Te Raekaihau Point can explore other avenues to obtain funding to appeal the resource consent decision.*

### **4. Background**

The Council has two distinct roles to play regarding the Wellington Marine Conservation Trust and its proposal to construct and operate a visitor attraction and educational facility at Te Raekaihau on Wellington's South Coast. These roles and the associated processes are outlined below.

#### **4.1 Non Regulatory/Strategic**

Wellington City Council has made a decision, in its non-regulatory capacity under the Local Government Act, to strategically support the Wellington Marine Conservation Trust and its proposal on Te Raekaihau. To obtain this support the Trust has undertaken a lot of work and investigation, over a period of some eight years which resulted in a detailed proposal to the Council in late 2004. Council officers undertook a comprehensive review of this plan and proposal and, as a result, the Council decided to support the aquarium planned at Te Raekaihau, and agreed to provide funding through its annual plan.

#### *Funding to date*

To date the Council has provided the following funding to the Wellington Marine Conservation Trust for the proposal at Te Raekaihau:

- In 1999, the Council provided a \$75,000 grant to the Trust to undertake a feasibility study to assess the concept of a Marine Education Centre and to undertake initial design work
- In 2004/5, \$120,000 was provided to the Trust towards the cost of preparation pre-construction phases/documents for the proposed visitor attraction and educational facility at Te Raekaihau.
- In 2005/06, \$360,000 was provided to the Trust. This grant was conditional on the Trust obtaining a further \$300,000 from other sources which the Trust achieved.

### *Condition of loan*

The Trust has also sought an interest free loan of \$7 million from the Council. This would be repaid over 25 years. This loan is conditional on the Trust securing the remaining \$12.6 million from other sources.

### *Guarantee*

Due to the non decision on the first resource consent hearing, and to allow the Trust to proceed with re-lodging a new application, the Strategy and Policy Committee recommended that Council provide a guarantee to the Trust, to the amount of \$200,000 to be used for the resource consent process (including any Environment Court appeal). Council approved the recommendation from SPC at its meeting on 31st May 2006.

This \$200,000 was in the form of a guarantee. A guarantee is where the Council agrees to act as a guarantor on a loan that a third party organisation has arranged with a lender, normally a commercial bank. The bank normally requires a guarantee in cases where the borrower cannot provide adequate security for the loan or does not have a proven credit history. The probability that the guarantee is called is assessed as very low because the scenario in which it will be required is where the resource consent is declined, and the Trust folds. As is now clear, the consent has been approved, and officer assessment is that this will be confirmed by the Environment Court in the appeal.

## **4.2 Regulatory**

The Council's other role is in its regulatory capacity under the Resource Management Act (RMA). Due to the Council's public support for the project, independent commissioners were appointed to hear the application.

With the recent lodgement and processing of the second resource consent application, independent commissioners appointed by the Council and Greater Wellington have made a decision to approve the proposal under the RMA. This decision was issued on 26 October 2006, with the 15 working day appeal period now closed.

Three appeals against the decision were lodged with the Environment Court. The three appellants are:

- Save the Point
- Christine Webster
- L Prince

They raise a series of matters but generally seek to have the resource consent decision over turned.

It is noted that the Group Against Development at Te Raekaihau Point (GADTR) have not lodged an appeal to the Environment Court. It is understood that they are supporting Save the Point in its appeal. If this request is taken any further,

the group would need to provide evidence to officers that any funds are used for appeal purposes only.

### **4.3 Appeal Request**

GADTR has stated that opponents to the project should be given similar funding from Council as the MEC proponents, particularly in light of the recent resolution for the \$200,000 guarantee to the WMC Trust.

Dr Robinson (on behalf of GADTR) wrote to the Mayor (28 October 2006) requesting that the Council fund the opponents \$200,000 to appeal the recent resource consent decision on MEC to the Environment Court.

In the Mayor's absence, the Deputy Mayor responded to Dr Robinson's request in writing (9 November 2006). A copy of this letter has been circulated to Councillors. In summary the letter clearly stated Council's position and advised that the Council would not fund Dr Robinson's group \$200,000, recommending that the group investigate other funding sources aside from the Council.

Upon return from her trip to China, the Mayor met with Dr Robinson and other representatives of the group. The Mayor re-iterated the points in the Deputy Mayor's letter and confirmed the Council's position on the matter.

The group were advised of their right to seek to make a deputation to Strategy and Policy Committee, which they did at its meeting of 23 November 2006, seeking a lesser amount of \$80,000 from the Council (reduced from the \$200,000 previously requested).

## **5. Discussion**

### **5.1 Community Support**

GADTR claim to represent the view of a portion of Wellington rate payers in respect to the proposal to construct and operate a visitor attraction and educational facility at Te Raekaihau on Wellington's South Coast. They are in opposition to the project.

Council has a legal obligation under the Local Government Act when making any decision to take into the account the views of the community. There are many ways that views can be taken into account both formally and informally, e.g. public input into committee meetings, written submissions, community meetings, newspapers and more formally through the Annual Plan process.

Over the 2000 – 2001 period the Council considered the Marine Education Centre proposal on a number of occasions and consulted on the project as a key issue in the 2001/02 Draft Annual Plan. Based on this, in June 2001 the Council considered the Trust's proposal and included funding for the project in the 2001/02 Annual Plan by way of guaranteeing a loan and funding to cover the interest on that loan for 20 years. Funding for the project therefore appeared in subsequent annual plans.

In July 2001, the Council again considered the Trust's proposal during deliberations on the Draft South Coast Management Plan (DSCMP) and Te Raekaihau was confirmed as the agreed site for the Marine Education Centre.

Public submissions on the DSCMP in relation to the Marine Education Centre project highlighted that there was a high public awareness of the proposal. A total of 4315 submissions (including form submissions) were received in support of the MEC on Te Raekaihau, 60 submissions were received in support of the MEC but not at Te Raekaihau and 31 submissions were received in opposition to MEC. Council deliberations specifically considered the site selection.

At the time it was noted that Council's independent research on the Marine Education Centre for the 2001/02 Annual Plan found that of a survey of 317 people 80% were in favour of the proposal, with 9% opposed and 10% didn't feel strongly one way or another.

Since 2001, the Trust independently undertook further consultation with the community and as a result worked up a revised concept design and business plan.

In June 2004 the Trust presented the updated concept plans to the Council, in support of a submission from the Trust requesting additional funding in the Annual Plan for the 2004/05 year. This was approved subject to conditions.

On this basis officers undertook a comprehensive project review recommending to Council that the proposal be considered as part of the 2005/06 Draft Annual Plan deliberations. The project was then consulted on as a key issue in the 2005/06 Draft Annual Plan process. Submissions were considered by Councillors through the Annual Plan consultation process. (The proposal received 229 submissions with 63% in support and 27% opposing the proposal).

It is noted that the issues raised by the GADTR are matters that have been considered in great detail a number of times via the various public regulatory and non regulatory processes. GADTR have been provided with several opportunities to present their views via the publicly funded LGA and RMA processes.

## **5.2 Implications of providing funding to opposition**

The request by GADTR essentially seeks to have the Council fund opponents of a project that Council supports strategically and financially.

It would neither make sense, nor be a good use of rates, to fund GADTR, when the Council has determined through a robust and public process over several years that it is in support of the MEC proposal.

There is also the matter that if the Council funds the opponents to appeal the resource consent decision, it would set a precedent for future projects that the Council strategically supports which some members of the community oppose.

To officers' knowledge the Council has only funded appeals (or aspects of appeals) on very rare occasions. In each of these the funding has been approved by full Council - on very limited terms:

*1: Tawa Community Board appeal against Transmission Gully designation*

The most significant was the Tawa Community Board (a body with status under the LGA but no funding mechanism and therefore one of the justifications for the Council providing funding) to fund the appeal of Transmission Gully (to the amount of \$150K).

Supporting the Tawa Community Board (TCB) financially allowed TCB to take a position that aligned with the Council strategically i.e. it was not opposing strategic decisions the Council had made.

*2: Funding for technical information for appellants*

Council in the mid-1990's granted approximately \$5000 to fund expert noise advice for RANAG (the residents group opposing the airport noise controls) who were an appellant to the Plan Change, and similar sum was provided for a traffic report for a residents group who opposed a clean fill operation. The Committee should note that in both cases this funding covered only the provision of specific technical information that the Council could not provide, and at the time there was no fund available from the Ministry for the Environment (MfE).

This is not the case in this situation, as such technical information has been made available to GADTR, and MfE has now established a fund for community groups as outlined below.

The request by GADTR is not consistent with either of the two circumstances outlined above.

### **5.3 Funding available to Community Groups**

There are avenues available to community groups who wish to appeal resource consent decisions. One such fund is the Environmental Legal Assistance Fund administered by the Ministry for the Environment. This was established specifically to assist community groups to participate more effectively in the resource management process, and provides funding to help prepare, mediate and/or present resource management cases to the Environment Court and other courts. Officers understand that the fund is available to cover the time and expenses of legal representatives and/or expert witnesses used in preparing for, resolving and/or presenting cases before the court.

## **6. Conclusion**

Council is providing funding to the MEC proponents because of the project's fit with Council's strategic direction in terms of education, environment, and tourism. Because the Council supports the project for Te Raekaihau strategically, it would not be in the Council's best interest to provide financial support to groups that oppose the project.

There are avenues available to community groups who wish to appeal resource consent decisions and it is recommended that the opponents explore these avenues if they wish to appeal the Council decision.

Contact Officer: *Kate Neilson, Project Manager, Council Controlled Organisations*

## **Supporting Information**

**1) Strategic Fit / Strategic Outcome**

*Because the Council supports the project for Te Raekaihau strategically it would not be in the Council's best interest to provide financial support to groups that oppose the project.*

**2) LTCCP/Annual Plan reference and long term financial impact**

*There is no funding allocated in the LTCCP to fund community groups that wish to appeal resource consent decisions to the Environment Court.*

**3) Treaty of Waitangi considerations**

*N/A.*

**4) Decision-Making**

*This is not a significant decision.*

**5) Consultation**

**a) General Consultation**

*Council is not required under legislation to consult generally on this matter.*

**b) Consultation with Maori**

*N/A.*

**6) Legal Implications**

*N/A*

**7) Consistency with existing policy**

*N/A*